



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 3, 1997

Mr. Jeffrey J. Horner
Bracewell & Patterson, L.L.P.
South Tower Pennzoil Place
711 Louisiana St. Ste 2900
Houston, Texas 77002-2781

OR97-0230

Dear Mr. Horner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103365.

The Galena Park Independent School District (the "district") received several requests for information from a requestor all dated November 19, 1996 which read in pertinent part as follows:

In addition, I request that copies of meeting Agenda Books for Trustees be made available to me and the North Port Beacon at the same time they are prepared for members of the board.

...

I request that a copy of the meeting agenda books that will be prepared for Trustees of GPISD for the regular monthly meeting in December, 1996, be prepared for me with the exclusion of any material that will be the subject of an Executive Session of the Board.

...

I request District Board of Trustees agenda books for the meetings of October 21, October 8 and November 18, all 1996. My request is only for that information which is available under the Open Information Act and does not include any material that is reserved for Executive Session

of the Board. I understand the need for Executive Sessions of the Board to protect the civil liberties and right to privacy of individuals in personnel matters. I also understand the need for Executive Session to protect the business interests of taxpayers which School Trustees are elected to represent.

Additionally, you reference a verbal request from the requestor for all the upcoming meeting agenda books.¹ The district does not claim any exceptions to the records involving the public portion of the meeting, and in fact, only seeks to withhold portions of the information contained within the executive session portion of the agenda book based on sections 552.101, 552.105, 552.107, 552.111, and section 552.114 of the Government Code. You enclose representative samples of the information the district seeks to withhold.²

The district's certified agendas or tape recordings of closed meetings are confidential by law. Gov't Code § 551.103; Open Records Decision No. 563 (1990) at 6. However, records that were discussed in a closed meeting and records created in a closed meeting, other than a certified agenda or tape recording, are not made confidential by chapter 551 of the Government Code. Open Records Decision No. 605 (1992).

You state that the district requests guidance concerning the standing request for all future Board Agenda books. The requestor is apparently requesting information that had not been compiled for distribution as agenda books at the time he made his request. A governmental body need not comply with a standing request to provide information on a periodic basis. Open Record Decision 465 (1987). The governmental body is also not required to treat a request as embracing information prepared after the request was made, or to inform the requestor subsequently when the information does come into existence. Open Records Decision No. 452 (1986). We now address the individual claimed exceptions to disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information is confidential by law when it is made confidential by federal statute or administrative regulations enacted pursuant to statutory authority. Open Records Decision No. 476 (1987) at 5. An examination of the records at issue do not appear to be confidential under section 552.101.

¹There is no requirement to produce information in the absence of a written request. Open Records Decision No. 483 (1987).

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted under section 552.105 that pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982). Because this exception extends to "information pertaining to" the location, appraisals, and purchase price of property, it may protect more than a specific appraisal report prepared for a specific piece of property. Open Records Decision No. 564 (1990) at 2. For example, this office has concluded that appraisal information about parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. *Id.* A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 (1982) at 3 (quoting Open Records Decision No. 222 (1979)). We have examined the documents and marked the portion which may be withheld under section 552.105.

You contend that various documents are confidential attorney-client communications under section 552.107. Section 552.107 excepts information from required public disclosure if:

- (1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas; or
- (2) a court by order has prohibited disclosure of the information.

You have submitted a number of documents to this office to which you contend are confidential attorney-client communications. However, section 552.107 does not provide a blanket exception for all communications between clients and attorneys or all documents created by an attorney. It excepts only those communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11. Section 552.107 does not except from disclosure a "basically factual recounting of events." Open Records Decision No. 574 (1990) at 5. It also does not except from disclosure "the attorney's mere documentation of calls made, meetings attended or memos sent . . . if no notes revealing the attorney's legal advice or the client's

confidences are included." *Id.* You did not mark the information submitted for review to indicate which portions of each document you believe to be excepted under section 552.107. We were unable to determine who had written various documents or for what purpose. We note that it was your responsibility to show the applicability of section 552.107 to the information. Open Records Decision No. 542 (1990) at 2 ("governmental body bears the burden of stating which exceptions apply and why"). Because you have not explained and we are unable to determine whether the submitted documents reveal client confidences or an attorney's legal opinion and advice to the client, section 552.107 is not applicable.

You also contend that certain documents are excepted from disclosure under section 552.111. Section 552.111 excepts from disclosure interagency or intra-agency communications "consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policy making processes of the governmental body." Open Records Decision No. 615 (1993) at 5. This office previously held that section 552.111 was applicable to the advice, opinion and recommendations used in decision-making processes within an governmental entity. Open Records Decision Nos. 574 (1990) at 1-2; 565 (1990) at 9. However, in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), the court addressed the proper scope and interpretation of this section. In light of that decision, this office re-examined the scope of section 552.111 in Open Records Decision No. 615 (1993).

In Open Records Decision No. 615 (1993) we determined that in order to be excepted from disclosure, the advice, opinion, and recommendation must be related to policy making functions of the governmental body rather than to decision-making concerning routine personnel and administrative matters. Most of the information at issue concerns personnel or administrative matters rather than the district's policy making functions. One document submitted to this office which we have marked is excepted from disclosure pursuant to section 552.111 and may be withheld.

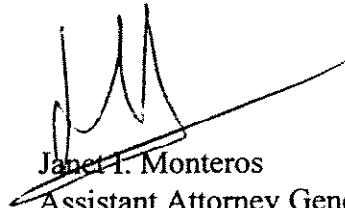
Section 552.114 provides for the exception from required public disclosure information pertaining to a student record at an educational institution funded wholly or partly by state revenue with some limited access provisions.³ In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

³None of the access provisions under section 552.114(b) pertain to instant requestor.

We note that information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). Since one of the documents at issue involves a de-identified expulsion report, it is not confidential under FERPA or section 552.114 and must be released.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Janet I. Monteros
Assistant Attorney General
Open Records Division

Yours very truly,

JIM/rho

Ref.: ID# 103365

Enclosures: Marked documents

cc: Mr. Robert Sneed
P.O. Box 648
Galena Park, Texas 77547
(w/o enclosures)